

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF FINAL RULEMAKING<sup>1</sup>**

**Z.C. Case No. 20-19**

**Office of Planning**

**(Text Amendment to Subtitles B, D, E, and F for Accessory Building Requirements)**

**February 11, 2021**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its amendment of the following sections of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the specific text at end of this notice:

- Subtitle B, Definitions, Rules of Measurement, and Use Categories - §§ 100, 308;
- Subtitle D, Residential House (R) Zones - § 1209, Chapter 50;
- Subtitle E, Residential Flat (RF) Zones - Chapter 50; and
- Subtitle F, Residential Apartment (RA) Zones - Chapter 50.

**Setdown**

On September 4, 2020, the Office of Planning (OP) filed a petition (Petition) with the Commission proposing amendments to clarify and provide consistency in the regulations governing accessory buildings across zones.

At its September 14, 2020 public meeting, the Commission voted to grant OP's request to set down the proposed text amendment for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General to refine the proposed text and add any conforming language as necessary.

**Public Hearing**

OP filed a December 11, 2020 hearing report proposing minor technical changes to the Petition, including clarification that penthouses and rooftop structures are not permitted above the matter-of-right height and number of stories on accessory buildings.

---

<sup>1</sup> This Notice of Final Rulemaking shall also be known as Z.C. Order No. 20-19 only for Office of Zoning tracking purposes

ANC 6C filed a December 18, 2020 letter (ANC 6C Report), that raised concerns about the following aspects of the Petition, in addition to some numbering errors:

- Maximum height of sheds – concerned that the Petition’s proposed ten (10)-foot maximum was too high, given that most prefabricated sheds are eight (8) feet tall and proposing an alternative maximum height of nine (9) feet;
- Lower measuring point for accessory building height – concerned that the Petition’s use of “finished grade” as the lower measuring point for calculating height would allow the manipulation of height by changing the grade, and proposing instead to adopt “the lower of finished or natural grade” as had been adopted by the Commission in Z.C. Case No. 17-18 for principal buildings;
- Upper measuring point for accessory building – concerned that the Petition did not clearly state that parapets and penthouses are included within the maximum building height; and
- Alley centerline setback – concerned that this requirement only applied to accessory buildings, but not fences and rollup gates or to sheds under the Petition.

At its December 21, 2020, public hearing, the Commission heard testimony from OP in support of the Petition, as well as from ANC 6C’s authorized representative. In response to the issues raised in the ANC 6C Report and testimony, and to questions from the Commission, OP:

- Explained that the Petition’s ten (10)-foot maximum height for sheds was based on the rules of the Department of Consumer and Regulatory Affairs (DCRA) that govern replacing a derelict structure, which do not require review if the existing structure is less than ten (10) feet tall, but also confirmed that this ten (10)-foot maximum height was to the highest point of a shed roof;
- Agreed to clarify that the maximum height of accessory buildings includes parapets;
- Agreed to adopt ANC 6C’s proposed lower measuring point for accessory building height as the lower of finished or natural grade at the base of the accessory building, or, per the Commission’s suggestion, at the grade of an alley, if higher; and
- Agreed to correct the numbering errors identified by the ANC 6C Report.

### **Proposed Action**

At the close of its December 21, 2020 public hearing, the Commission voted to take **PROPOSED ACTION** to grant the Petition, as amended to respond to the concerns of ANC 6C and the Commission to clarify that the maximum height of accessory buildings includes parapets and is based on the lower of finished or natural of the building or alley grade, to authorize the publication of a Notice of Proposed Rulemaking:

**VOTE** (December 21, 2020): **5-0-0** (Peter G. May, Robert E. Miller, Anthony J. Hood, Peter A. Shapiro, and Michael G. Turnbull to **APPROVE**)

OZ published a Notice of Proposed Rulemaking (NPR) in the January 8, 2021, *D.C. Register* (68 DCR 409, *et seq.*).

The Commission received one comment in response to the NOPR – a February 8, 2021 letter<sup>2</sup> from ANC 6C (ANC 6C 2<sup>nd</sup> Report) that noted the ANC’s appreciation for the Commission’s revisions to the Petition, but also a concern that the Petition was ambiguous with regards to how parapets, penthouses, and rooftop structures related to the maximum building height because parapets were addressed in one proposed new subsection and penthouses and rooftop structures in another.<sup>3</sup>

### **National Capital Planning Commission**

The Commission referred the Petition to the National Capital Planning Commission (NCPC) on December 22, 2020, for the thirty (30)-day review period required by § 492(b)(2) of the District Charter (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2)); D.C. Official Code 6-641.05 (2018 Repl.).

NCPC filed a February 4, 2021 report, stating that NCPC had determined, pursuant to delegated authority, that the Petition was not inconsistent with the federal elements of the Comprehensive Plan and would not adversely impact any identified federal interests.

### **Final Action**

#### **“Great Weight” to the Recommendations of OP**

The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Y § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds persuasive OP’s recommendation that the Commission take final action to adopt the Petition and concurs in that judgment.

#### **“Great Weight” to the Written Report of the ANCs**

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to

---

<sup>2</sup> Although the February 8, 2021, letter was filed by the ANC’s authorized representative in this case, the ANC adopted the letter at its duly noticed February 10 meeting with a quorum present as required to be afforded “great weight.”

<sup>3</sup> The Public Hearing Notice and NOPR incorrectly numbered the Petition’s proposed subsections governing maximum building height and parapets as Subtitle B § 308.9 and that governing penthouses and rooftop structures as Subtitle B § 308.10, when these should have been numbered Subtitle B §§ 308.10 and 308.11 (Z.C. Order No. 19-13 had added a new Subtitle B § 308.9 effective October 30, 2020). The ANC 6C 2<sup>nd</sup> Report repeated this error as it responded to the NOPR. The Commission responded by combining these two proposed subsections into a single new subsection, which is correctly numbered as Subtitle B § 308.10.

“encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

The Commission finds the issues and concerns raised by the ANC 6C Reports persuasive and concurs that:

- Parapets and penthouses should be included within the maximum height of accessory buildings and should be addressed together in a single subsection to avoid potential ambiguity, although the Commission believes this is best accomplished by combining the two proposed subsections governing this issue by adding “penthouses, and rooftop structures” at the end of the proposed Subtitle B § 308.10 (as corrected from the NOPR’s incorrect numbering); and
- The lower measuring point should be based on the lower of finished or natural grade, except if the alley grade is higher.

The Commission did not agree with the ANC 6C Report’s proposed maximum nine (9)-foot maximum building height for sheds, based on OP’s explanation that the Petition’s ten (10)-foot maximum aligned with DCRA’s administrative processes and OP’s confirmation that this maximum height was to the highest point of the roof.

At its February 11, 2021, public meeting, the Commission voted to take **FINAL ACTION** to grant the Petition, as published in the NOPR with the non-substantive change made in response to the ANC 6C 2<sup>nd</sup> Report’s concern to address parapets, penthouses, and rooftop structures in relation to maximum building height in the same subsection, and to authorize the publication of a Notice of Final Rulemaking:

**VOTE** (February 11, 2021): **5-0-0** Peter G. May, Michael G. Turnbull, Anthony J. Hood, Robert E. Miller, and Peter A. Shapiro to **APPROVE**)

The complete record in the case can be viewed at the Office of Zoning’s Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

The following amendments to the text of the Zoning Regulations are hereby adopted.

**I. Amendment to Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES**

**Subsection 100.2 of § 100, DEFINITIONS, of Chapter 1, DEFINITIONS, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is revised to add a new definition of “Shed”, to read as follows:**

100.2           When used in this title, the following terms and phrases shall have the meanings ascribed:

...<sup>4</sup>

---

<sup>4</sup> The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the amendment of the provisions does not signify an intent to repeal.

Sexually-Oriented Business Establishment: An establishment ...

Shed: An accessory building, not used for habitable or automobile purposes, that does not exceed 50 square feet (50 sq. ft.) in area and is less than 10 feet (10 ft.) in overall height.

Short-Term Rental: A use as defined by the Short-Term Rental Regulation Act ...  
...

**A new § 308.10 is added to § 308, RULES OF MEASUREMENT FOR BUILDING HEIGHT: RESIDENTIAL ZONES AS DEFINED IN SUBTITLE A § 101.9, of Chapter 3, GENERAL RULES OF MEASUREMENT, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, to read as follows:**

308.10 The building height of accessory buildings shall be measured from (i) the lower of the finished or natural grade at the middle of the side of the accessory building that faces the principal building, or (ii) the midpoint of the alley lot line if required for vehicular access to the alley, to the highest point of the roof of the building including parapets, penthouses, and rooftop structures.

## **II. Amendment to Subtitle D, RESIDENTIAL HOUSE (R) ZONES**

**Section 1209, ACCESSORY BUILDINGS, of Chapter 12, GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is revised by amending §§ 1209.1 through 1209.4, and by deleting § 1209.5 and adding a new § 1209.5, to read as follows:**

1209.1 Accessory buildings shall be permitted within an R-19 or R-20 zone subject to the conditions of this section.

1209.2 Except for a shed, an accessory building shall be located facing an alley, or private alley to which the owner has access by an easement recorded with the Recorder of Deeds, and shall be set back a maximum of five feet (5 ft.) from the rear property line or a line perpendicular to the façade of the principal building.

1209.3 In the R-19 zone, an accessory building within five feet (5 ft.) of a public or private vehicular alley may have a maximum height of twenty-two feet (22 ft.), a maximum building area of four hundred and fifty square feet (450 sq. ft.) and a maximum number of two (2) stories.

1209.4 In the R-20 zone, an accessory building within five feet (5 ft.) of a public or private vehicular alley may have a maximum height of twenty-two feet (22 ft.), a maximum building area of four hundred and fifty square feet (450 sq. ft.) and a maximum number of two (2) stories.

1209.5 In the R-19 and R-20 zones, a shed may be permitted in a required rear or side yard provided it is at least five feet (5 ft.) from a public or private vehicular alley.

1209.6 Roof decks ...

**Chapter 50, ACCESSORY BUILDING REGULATIONS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is revised by deleting §§ 5000.4, 5003, and 5004, and renumbering<sup>5</sup> and amending the remaining subsections, to read as follows:**

**5000 GENERAL PROVISIONS**

5000.1 Accessory buildings shall be permitted within an R zone subject to the conditions of this section.

5000.2 An accessory building shall:

- (a) Be subordinate to and located on the same lot as the building; to which it is accessory; provided, that an accessory building may contain a parking space accessory to, and required for, a use on another lot where specifically permitted under other provisions of this title;
- (b) Be used for purposes which are incidental to the use of the principal building; provided that no more than one (1) accessory apartment shall be allowed;
- (c) Be secondary in size compared to the principal building;
- (d) Be constructed after the construction of a principal building on the same lot; and
- (e) Not be constructed in front of the principal building.

5000.3 An accessory building shall be included in the calculation of lot occupancy and shall comply with all yards required for accessory buildings in the zone.

5000.4 A private garage permitted in an R zone as a principal use on a lot other than an alley lot, shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within seven and one-half feet (7.5 ft.) of the centerline of the alley upon which it opens.

---

<sup>5</sup> The Notice of Proposed Rulemaking incorrectly renumbered Subtitle D § 5007, Special Exception, as Subtitle D § 5006, Special Exception because this section had been deleted by the Notice of Final Rulemaking in Z.C. Case No. 19-14, effective on its July 3, 2020, publication in the *D.C. Register*.

**5001 DEVELOPMENT STANDARDS**

5001.1 The bulk of accessory buildings in the R zones shall be controlled through the development standards in Subtitle D §§ 5002 through 5006.

**5002 HEIGHT**

5002.1 The maximum height of an accessory building in an R zone shall be two (2) stories and twenty-two feet (22 ft.).

**5003 MAXIMUM BUILDING AREA**

5003.1 The maximum building area for an accessory building in an R zone shall be the greater of thirty percent (30%) of the required rear yard or four hundred and fifty square feet (450 sq. ft.).

**5004 REAR YARD**

5004.1 An accessory building other than a shed may be located within a rear yard in an R zone provided that the accessory building is:

- (a) Not in a required rear yard; and
- (b) Set back at least seven and one-half feet (7.5 ft.) from the centerline of any alley.

5004.2 A shed may be located within a required rear yard of a principal building.

**5005 SIDE YARD**

5005.1 An accessory building other than a shed may be located in a side yard in a R zone, provided that it is removed from the side lot line a distance equal to the required side yard and from the principal building a minimum of ten feet (10 ft.).

5005.2 A shed may be located within a required side yard of a principal building.

**III. Amendment to Subtitle E, RESIDENTIAL FLATS (RF) ZONES**

**Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is revised to read as follows<sup>6</sup>:**

---

<sup>6</sup> The Notice of Proposed Rulemaking incorrectly renumbered Subtitle E § 5007, Special Exception, as Subtitle E § 5006, Special Exception because this section had been deleted by the Notice of Final Rulemaking in Z.C. Case No. 19-14, effective on its July 3, 2020, publication in the *D.C. Register*.

**5000 GENERAL PROVISIONS**

5000.1 Accessory buildings shall be permitted within an RF zone subject to the conditions of this section.

5000.2 An accessory building shall:

- (a) Be subordinate to and located on the same lot as the building to which it is accessory; provided, that an accessory building may contain a parking space accessory to, and required for, a use on another lot, where specifically permitted under other provisions of this title;
- (b) Be used for purposes that are incidental to the use of the principal building; provided that no more than one (1) principal dwelling unit shall be allowed;
- (c) Be secondary in size compared to the principal building;
- (d) Be constructed after the construction of the principal building; and
- (e) Not be constructed in front of the principal building.

5000.3 An accessory building shall be included in the calculation of lot occupancy, pervious surface, and as applicable, the floor area ratio (FAR) of the RF zones, and shall comply with all required yards for accessory buildings in the zone.

5000.4 A private garage permitted in an RF zone as a principal use on a lot other than an alley lot, shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within seven and one-half feet (7.5 ft.) of the centerline of the alley upon which it opens.

**5001 DEVELOPMENT STANDARDS**

5001.1 The bulk of accessory buildings in the RF zones shall be controlled through the development standards in Subtitle E §§ 5002 through 5006.

**5002 HEIGHT**

5002.1 The maximum height of an accessory building in an RF zone shall be twenty-two feet (22 ft.) and two (2) stories.

**5003 BUILDING AREA**

5003.1 The maximum building area for an accessory building in an RF zone shall be the greater of thirty percent (30%) of the required rear yard or four-hundred and fifty square feet (450 sq. ft.).

**5004 REAR YARD**

5004.1 An accessory building other than a shed may be located within a rear yard in an RF zone provided that the accessory building is:

- (a) Not in a required rear yard; and
- (b) Set back at least seven and one-half feet (7.5 ft.) from the centerline of any alley.

5004.2 A shed may be located within a required rear yard of a principal building.

**5005 SIDE YARD**

5005.1 An accessory building other than a shed may be located within a side yard in an RF zone provided that the accessory building is set back at least seven and one-half feet (7.5 ft.) from the centerline of any alley.

5005.2 A shed may be located within a required side yard of a principal building.

**IV. Amendment to Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES**

**The title of Chapter 50, ACCESSORY BUILDING REGULATIONS (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is revised to read as follows:**

**CHAPTER 50 ACCESSORY BUILDING REGULATIONS FOR RA ZONES**

**Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is revised to read as follows<sup>7</sup>:**

**5000 GENERAL PROVISIONS**

5000.1 Accessory buildings shall be permitted within an RA zone subject to the conditions of this section.

5000.2 An accessory building shall:

- (a) Be subordinate to and located on the same lot as the building to which it is accessory; provided, that an accessory building may contain a parking space accessory to, and required for, a use on another lot, where specifically permitted under other provisions of this title;

---

<sup>7</sup> The Notice of Proposed Rulemaking incorrectly revised Subtitle F § 5005, Special Exception, because this section had been deleted by the Notice of Final Rulemaking in Z.C. Case No. 19-14, effective on its July 3, 2020, publication in the *D.C. Register*.

- (b) Be used for purposes which are incidental to the use of the principal building;
- (c) Be secondary in size compared to the principal building;
- (d) Be constructed after the construction of a principal building on the same lot; and
- (e) Be constructed behind the principal building.

5000.3 An accessory building shall be included in the calculation of lot occupancy, Green Area Ratio (GAR), and as applicable, the floor area ratio (FAR) of the RA zones; and shall comply with all yards required for accessory buildings in the zone.

5000.4 A private garage permitted in an RA zone as a principal use on a lot other than an alley lot, shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within seven and one-half feet (7.5 ft.) of the centerline of the alley upon which it opens.

**5001 DEVELOPMENT STANDARDS**

5001.1 The bulk of accessory buildings in the RA zones shall be controlled through the development standards in Subtitle F §§ 5001 through 5004.

**5002 HEIGHT**

5002.1 The maximum permitted height for an accessory building shall be twenty-two feet (22 ft.) and two (2) stories.

**5003 REAR YARD**

5003.1 An accessory building other than a shed may be located within a rear yard in an RA zone provided that it is:

- (a) Not in a required rear yard; and
- (b) Set back at least seven and one-half feet (7.5 ft.) from the centerline of any alley.

5003.2 A shed may be located in a required rear yard of a principal building.

**5004 SIDE YARD**

5004.1 An accessory building other than a shed may be located in a side yard in an RA zone provided that the accessory building is removed from the side lot line a

distance equal to the required side yard and from the principal building a minimum of ten feet (10 ft.).

5004.2 A shed may be located in a required side yard of a principal building.

In accordance with the provisions of Subtitle Z § 604.9, this Notice of Final Rulemaking shall become final and effective upon publication in the *D.C. Register*; that is, on March 19, 2021.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
\_\_\_\_\_  
ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
\_\_\_\_\_  
SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING